

1980-B

For: State and County Offices

**Processing Farm Credit Programs
Guaranteed Loan Loss Claims When Bankruptcy Has Occurred**

Approved by: Deputy Administrator, Farm Credit Programs

Sau Anne Kling

1 Overview

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Background

FmHA Instruction 1980-B, Section 1980.144 provides direction for servicing guaranteed loans under bankruptcy. Further instruction is needed to provide a uniform understanding between all Field Offices and the St. Louis Finance Office on the processing of guaranteed loan estimated or interest loss claims under reorganization bankruptcy.

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Purpose

The purpose of this notice is to:

- clarify how guaranteed loan estimated and interest loss claims are to be processed in reorganization bankruptcy cases
- replace FmHA Administrative Notice 3011 (1980) on the same subject dated May 9, 1994, which expired March 31, 1995.

Disposal

November 1, 1996

Distribution

State Offices; State Offices relay to County Offices and Ag Credit Teams

2 Action

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Bankruptcy and Guaranteed Loss Claims

The term confirmation date means the approval date of the bankruptcy plan. The term effective date means the date the plan will go into effect. A bankruptcy plan confirmation date may be different than the effective date. State Offices and Ag Credit Teams must review the court order to determine these dates.

Estimated loss claims will not be approved until the bankruptcy court approves the reorganization plan as required by the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144 (d)(1). Approval and confirmation are one and the same term for determining when an estimated loss claim will be filed. **The borrower's performance under the reorganization plan is not complete upon confirmation of the plan.**

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FmHA 449-30

Ag Credit Teams and State Ag Credit Program staffs must ensure that FmHA 449-30 is coded correctly:

- in a Chapter 11, 12, or 13 reorganization, block 3A, "Report Type Code", must be coded as a 5, "Loss Bankruptcy Reorganization".
- for interest loss claims, block 3 must be coded as an 8, "Interest Loss Payment".

These codes are in compliance with the revised form and Form Manual Insert (FMI) for FmHA 449-30, which will be issued at a later date. However, the Finance Office accounting system has already made the conversion to the new codes.

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C **Court Treatment of Guaranteed Debt**

The bankruptcy court may order the combining of guaranteed and nonguaranteed loans. If this occurs, FSA should recommend to the lender that separate ledgers be kept for handling the guaranteed portion of the debt, in the event of future losses. FSA cannot require the lender to keep separate ledgers.

D **Initial Estimated Loss Claim**

The initial estimated loss claim submitted will entitle the lender to accrued interest on the entire principal balance up to the effective date, but will not include interest paid to the date of the check. The following must be attached to the initial estimated loss claim for a bankruptcy:

- a copy of the confirmed bankruptcy plan
- a memorandum clearly indicating the plan confirmation date and the date the plan is to go into effect

Note: The bankruptcy plan will define the length and terms of the reorganization plan.

- any other relevant information concerning the loan and the loss claim.
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E **Revised Estimated Loss Claims**

Any revision to the initial estimated loss claim must be based upon court approved changes to the reorganization plan and will be coded as a 5, "Loss-Bankruptcy Reorganization". FSA will review this claim to ensure that all principal and interest balances accurately reflect all previous estimated loss claim payments made during the term of the bankruptcy plan. The lender's claim will include interest paid to the effective date.

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Interest Loss Claims

The lender will submit interest loss claims coded with an 8, "Interest Loss Payment", annually during the reorganization plan if a court ordered interest rate reduction has occurred.

If the lender had a variable rate that remains at or below the court ordered rate during the claim period, a loss claim will not be submitted. However, a loss claim may be submitted for the time during the claim period that the lender's interest rate was above the court ordered rate.

All loss claims for loss of interest due to a court ordered interest rate reduction will be processed on the anniversary date of the effective date. The Finance Office will pay interest to this date or the completion date of the interest rate reduction.

Interest loss incurred as a result of a permanent court ordered interest rate reduction, which extends beyond the term of the reorganization plan, will be paid annually upon submission of the lender's loss claim. This claim will be submitted annually by the lender on the anniversary date of the effective date or the completion date of the interest rate reduction. The Finance Office will pay the interest to the anniversary date of the effective date or completion date.

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Completion of Bankruptcy Plan

When performance under the confirmed bankruptcy plan has been completed, the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144 (d)(1) require the lender to provide FSA with documentation necessary to review and adjust the estimated loss claim, if necessary, to reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured by the court. The lender must submit FmHA 1980-44 at the conclusion of the bankruptcy to accurately reflect the loan status as required by FmHA Instruction 1980-B, Section 1980.144 (d)(1).

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Payments in Full

When a guaranteed loan that was included in a reorganization bankruptcy is paid in full under the terms of the loan without incurring an additional loss, the Ag Credit Team will advise the Finance Office that the secured portion of the loan was paid in full. This will be accomplished by having the lender complete FmHA 1980-41 and submit it to the Finance Office. The Finance Office will then close out the account.

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Overpayments

Whenever it is determined that the lender has been overpaid by FSA the lender will prepare FmHA 449-30 to reimburse FSA the overpayment with interest accrual at the note rate, from the date of FSA's loss claim check to the date of settlement. The reimbursement of the overpayments with interest accrual at the note rate is required by the Lender's Agreement.

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Collection on Unsecured Debt

Any time the lender receives a voluntary payment on the unsecured portion of the guarantee, the lender will submit to FSA its share of the proceeds.

State Offices will process these claims by sending the funds along with FmHA 451-2. In addition, State Offices must complete a revised FmHA 449-30 with block 3A coded as D, and the amount of payment indicated in block 44. FmHA 449-30 will then be submitted to the Finance Office to adjust the existing loss claim.

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Final Loss Claims

According to the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144 (d)(3), final loss claims for guaranteed loans that were reorganized under bankruptcy can only be processed when a liquidation takes place. Future recovery only applies when collections are made upon loans in which a final loss claim has been processed and the borrower has not been released from liability.

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Ordering Forms

Forms and instructions referenced in this notice can be obtained from the KC Warehouse.

- Ag Credit Teams and County Offices shall order through the State Office.
 - State Offices shall submit ASCS-159 to the KC Warehouse.
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3 Contacts

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Contacts in National Office

Direct questions regarding this notice to the Farm Credit Programs Guaranteed Servicing Branch through the Area Office.
